

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by Midwest
Wireless Communications, L.L.C. for
Designation as an Eligible Telecommunications
Carrier Under 47 U.S.C. § 214(e)(2)

ISSUE DATE: July 5, 2002

DOCKET NO. P-573/AM-02-686

ORDER REQUIRING ADDITIONAL
FILINGS, VARYING TIME PERIOD AND
NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On May 7, 2002, Midwest Wireless Communications, L.L.C. (Midwest Wireless) filed its petition for designation as an Eligible Telecommunications Carrier (ETC)¹. Midwest Wireless requested that the Commission designate it as eligible to receive all available federal Universal Service Fund (USF) support for rural, insular and high cost areas and low income customers. It seeks ETC designation in areas where it is currently licensed to provide cellular carrier service, generally in the southern and central part of Minnesota.

On May 17, 2002, the Minnesota Independent Coalition (MIC)² filed a Petition to Intervene and a Challenge to Completeness of the Petition filed by Midwest Wireless.

On May 24, 2002, Midwest Wireless filed its reply comments opposing the Challenge to Completeness.

On May 28, 2002, Citizens Telecommunications Communications Company of Minnesota, Inc. (Citizens) and Frontier Communications of Minnesota, Inc. (Frontier) filed a Petition to Intervene and comments.

On May 28, 2002, HickoryTech Inc. (HickoryTech) filed comments.

¹ In accordance with section 213(e)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e) and Section 54.201 of the Federal Communications Rules, 47 C.F.R. § 54.201.

² On behalf of its 72 rural telephone companies members.

On May 28, 2002, MIC filed initial comments regarding the substantive issues raised by Midwest Wireless' application.

On June 3, 2002, in response to the Commission's granting the Department of Commerce's (DOC's) request for a twenty day extension to file comments, MIC filed comments requesting that the 20-day time extension should be subject to a corresponding extension of the 180-day time period, as set forth in Minnesota rules³, for the Commission to take final action.

On June 10, 2002, Midwest Wireless requested that the 180-day time period for the Commission to take final action on Midwest's petition not be extended.

On June 17, 2002, the DOC filed its comments recommending that the Commission deny Midwest Wireless' application without prejudice.

On June 17, 2002, Citizens and Frontier filed revised comments.

This matter came before the Commission on June 20, 2002.

FINDINGS AND CONCLUSIONS

This Order addresses procedural issues relating to Midwest Wireless' petition and makes no determination on the merits. Specifically, it addresses the completeness of Midwest Wireless' application, the 180-day review period and the issue of further proceedings.

I. Summary of Midwest Wireless' Petition

Midwest Wireless requests that the Commission designate it as an ETC for the purpose of receiving all available support from the federal universal service fund. Midwest Wireless is a Commercial Mobile Radio Service (CMRS) carrier, providing "mobile service."⁴ It is licensed to provide cellular telecommunications services in 35 Minnesota counties. Its service area includes territory currently served by Qwest, a non-rural incumbent local exchange carrier (ILEC) and 49 rural ILECs. It offers services throughout its licensed service area utilizing its own facilities - including its own wireless antennas, towers, and mobile switching offices.

Midwest Wireless covers, in its entirety, the service area of 36 rural LECS. Midwest Wireless requested that the Commission designate Midwest Wireless an ETC for these areas.

Midwest Wireless serves 33 of Qwest's wire centers and requested immediate ETC designation in these areas.

³ Pursuant to Minn. Rules part 7812.1400, subp. 12 and Minn. Rules part 7811.1400, subp. 12.

⁴ As defined at 47 U.S.C. § 153(27).

Midwest Wireless serves only certain wire centers or only a portion of certain wire centers of 13 LECs. Midwest Wireless also requested ETC designation in those rural service areas it does not cover completely. In order to facilitate Midwest Wireless' designation as an ETC in these areas, Midwest Wireless requested that the service areas of these LECs be disaggregated by wire center.

II. Jurisdiction

The Commission has jurisdiction over the designation of ETC's pursuant to 47 U.S.C. Section 214 (e).

III. The Completeness of Midwest Wireless' Petition and the Start of the 180-day review period.

A. Positions of the Parties

1. MIC

MIC challenged the completeness of the Midwest Wireless Petition. It argued that the Petition did not indicate the prices of the services for which Midwest seeks federal USF funding and did not indicate the total amount of federal USF funding which Midwest Wireless would receive if its Petition were granted by the Commission.

MIC argued that information on the issues of affordability of the services for which Midwest Wireless would seek federal USF funding and the total amount of federal USF funding that Midwest Wireless anticipates receiving is necessary for the Commission to make a determination on whether designating Midwest Wireless as an ETC is in the public interest as required by 47 U.S.C. § 214(e)(2) and Minn. Rule, part 7811.1400, subp. 2.

It argued that the Commission has a responsibility for ensuring that universal service rates are affordable.

Further, it argued that the level of federal USF funding that Midwest Wireless receives for its standard mobile services will increase the total cost of providing federal Universal Service on approximately a dollar-for-dollar basis. That increase in cost is important to determining whether the ETC designation of Midwest cellular is in the public interest.

Because there is no information at all on affordability or the amount of funding Midwest Wireless expects to receive, MIC argued that the Petition should be dismissed or the 180-day time period be suspended until the Petition is amended to address affordability.

2. Citizens and Frontier

Citizens and Frontier argued that the Commission should vary its rule and allow the 180-day review period to start when Midwest Wireless files additional information including:

- a tariff containing a detailed description of its universal service offering;
- a plan for advertising its universal service offering;
- a proposed customer service agreement.

3. DOC

The DOC argued that Midwest Wireless has not made a credible preliminary showing of its willingness and capability to provide high quality, affordable service to rural customers throughout its proposed service area. The DOC recommended that Midwest should be required to provide the following prior to the Commission considering Midwest's eligibility to receive federal universal service funds:

- a formal tariff detailing its universal service offering and pricing plan;
- its plan for advertising the offering throughout its proposed service area;
- a service quality plan that complies with the Commission's existing service quality standards;

The DOC recommended that the Commission deny Midwest Wireless' application without prejudice.

4. Midwest Wireless

Midwest Wireless argued that the objections of MIC to its filing do not warrant dismissal of its petition nor do the objections warrant suspension of the 180-day time period for completing this case. It argued that the 180-day time period should begin on the date Midwest Wireless filed its petition.

Midwest Wireless argued that its Petition is complete because it has addressed the six elements set forth in Minn. Rule 7811.1400 subp.4. None of the arguments put forth by MIC relate to the inadequacy of the petition with respect to those elements. For this reason, it requested that the Commission find its Petition complete and proceed to consider the merits of its application in an expeditious manner.

At the Commission meeting, Midwest Wireless requested that the issue of what information it should be required to provide should be seen as a substantive issue and should be heard in future proceedings. It requested that this issue be considered when the merits of the case are addressed.

B. Commission Action on the Completeness of the Application and the Start of the 180-day Review Period.

The Commission agrees with the parties that in order to meaningfully review the merits of this filing additional information is required. The Commission will require Midwest Wireless to file additional information that is necessary for the Commission to critically evaluate such issues as affordability of rates, service quality, whether the service substitutes for or is in addition to the existing basic wired local service, and the implications on the cost of universal service support.

The Commission will order Midwest to file the following information that is missing from Midwest Wireless' application:

- a price list or tariff showing the type, prices, and terms of services, including local usage levels and calling areas, for which Midwest Wireless seeks universal support;
- an advertising plan;

- a list of facilities used to provide services;
- a customer service agreement defining a service quality plan consistent with the Company's claim to provide high quality services;
- a statement why it is eligible to become an ETC, despite not being a competitive LEC pursuant to Minn. Rule 7811.1400, subp. 2.

Further, the Commission will vary the 180-day time period for Commission action so that the 180-day time period starts upon Midwest's filing of the documents listed above. However, the Commission recognizes and accepts Midwest Wireless' request that any substantive challenge the Company may make to any of the specific information required above will be heard in future proceedings after the start of the 180-day review period.

IV. Further Proceedings

A. Parties' Positions

1. Midwest Wireless

Midwest Wireless requested that the Commission conduct an expedited hearing under Minn. Stat. § 237.61, arguing that time was an important factor.

2. Citizens, Frontier

Both of these Companies recommended that the Commission refer the petition to the Office of Administrative Hearings (OAH) for further investigation in a contested case proceeding. The Companies cited several material facts that are unknown including the types, prices and terms of the offered services, the impact of full service wireless provision on federal, and any future state USF funding, the impact of mobile wireless on the service area and the proposed disaggregation of many ILECs' study areas, both at the exchange and sub-exchange levels.

3. MIC

MIC also recommended that this matter be referred to the OAH for a contested case proceeding, arguing that this case raises issues not previously considered by the Commission. It argued that a contested case proceeding would be the most efficient way of obtaining all the necessary information within a limited time period.

B. Commission Action on Further Proceedings

The Commission refers this matter to the OAH for a contested case proceeding upon receipt of Midwest Wireless' filing of the material listed in section III B, above. It recognizes that a contested case proceeding would be the most efficient way to develop a full and complete record in the limited time available.

Further, the Commission notes that it intends that any dispute concerning the production of material required in section III B, herein, be heard by the Administrative Law Judge as part of the contested case proceeding.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

Discovery and Informal Disposition

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Lillian A. Brion, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 297-7864; or Karen Hammel, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-1852.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Midwest Wireless Communications, L.L.C., Citizens Telecommunications Company of Minnesota, Frontier Communications of Minnesota, the Minnesota Independent Coalition, and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be scheduled by the Administrative Law Judge as soon as possible after the filing of the documents set forth in Section III B, herein. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The Commission is required to act on the Company's filing within 180 days of the filing of the documents required in this Order. Minn. Rule, part 7811.1400, subp. 12 (as varied in the Order herein).

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints and requests that the Administrative Law Judge submit his final report in order to allow the Commission adequate opportunity for thorough consideration.

VI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VII. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The 180-day time period for Commission action shall start upon the receipt of Midwest Wireless' filing of the following:
 - a price list or tariff showing the type, prices, and terms of services, including local usage levels and calling areas, for which Midwest Wireless seeks universal support;
 - an advertising plan;
 - a list of facilities used to provide services;
 - a customer service agreement defining a service quality plan consistent with the Company's claim to provide high quality services;
 - a statement why it is eligible to become an ETC, despite not being a competitive LEC pursuant to Minn. Rule 7811.1400, subp. 2.
2. The Commission hereby refers this case to the Office of Administrative Hearings for a contested case proceeding upon receipt of Midwest Wireless' filing of the material set forth in ordering paragraph 1, above.
3. The petitions to intervene by MIC, Citizens, and Frontier are hereby granted.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Petition by Midwest Wireless Communications, LLC for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2) MPUC Docket No. P-573/AM-02-686
OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick, Office of Administrative Hearings, Suite, 1700, 100 Washington Square, Minneapolis, Minnesota 55401; (612) 349-2544.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____